first answers and persist until replies are elicited agreeable to the interrogators and perhaps consonant with their own preconceived inclinations, for the complainant had had the prior word.

It may be that the first denial was untrue and the subsequent confession was true, but under the circumstances explained it could never be said to be free and voluntary.

I am forced back to the fundamental principle of criminal law — is there a reasonable doubt in respect of the credibility of a confession elicited after persistent interrogation following an initial denial? I think there is bound to be, and the accused must receive the benefit thereof.

The evidence of the confession to the Assistant Manager Mr. J. Anderson through Conductor Gurusamy is held inadmissible.

Ruling accordingly.

ANYAM & ANOR. v. INTAN.

[A. C. J. (Taylor J.) February 13, 1948]

[Seremban — Civil Appeal No. 4 of 1947]

Probate and Administration Enactment (Cap. 8), s. 184(iii) — Distribution of estate — Adat perpateh — Customary land — Harta pembawa — Distribution Enactment (Cap. 71), s. 2.

This was an appeal against an order of the Collector, Kuala Pilah, in a distribution suit in which the respondent the widow of the deceased applied for transmission of a one-third share in land at Kuala Pilah according to the Muslim Law and the appellants claimed transmission under the *adat perpateh*. The deceased was the member of a tribe but the land was not registered as "Customary Land."

Held: (1) in such cases the Collector should distribute the estate according to the law or custom having the force of law applicable to the deceased and where the deceased was a member of a tribe that law is almost always the *adat;* (2) the absence of the words "Customary Land" does not by itself prove that the land was not "occupied subject to custom" or that it was not ancestral; (3) the declaration of separate property, *harta dapatan* and *harta pembawa* does not affect the classification of such property but is a matter of evidence only and if there is sufficient other evidence that the property is in fact *harta pembawa* or *harta dapatan* it is not necessary to prove that a declaration was made.

CIVIL APPEAL.

Muthu Ramalingam for the appellants.

Respondents in person.

Cur. Adv. Vult.

Taylor J. : — This is an appeal against an Order of the Collector, Kuala Pilah in Distribution Suit No. 64 of 1946 in which Intan, the widow of the deceased, applied for transmission of a 1/3 share in E.M.R. 85, Pilah, according to the Mohammedan law and Anyam and others, his *Waris,* claimed transmission under the *Adat Perpateh.*

The land is clearly proved, by the former title dated 1887 which was exhibited, to have been an ancient ancestral *sawah* of the Tanah Datar tribe. The evidence shows that this ancestral land devolved on Rolan, the mother of the deceased, who had no daughter. She appears to have transferred it to her three sons when she was about to go to Mecca. The *lembaga* of her tribe said that she "empowered" the land to them and that the fact of the transfer was not known to the tribe. If it is a transfer, he says, it should be regarded as for life only. The transfer was not produced but it is said to have been made about 1927. The title has never been inscribed "Customary land" but it is well known that the inscription was often omitted from titles which were in truth ancestral and the Collector rightly held that this omission does not by itself establish that the land was not occupied subject to the custom.

The widow frankly admitted that the land came into the possession of the deceased before her marriage to him and she never at any time claimed that it was *charian laki-bini.* The ground of her claim is that, as she says, her husband told her in his lifetime that it should be transmitted to her and his children. She claims under Mohammedan law because she could not possibly succeed under the *adat.* The Collector has overlooked the fact that she claims not only for herself and her own children but on behalf of his children by a former wife who belong to another tribe and are not in fact living with or maintained by the applicant.

The Collector refers to section 2 of the Distribution Enactment but that is a wholly negative provision and does not affect the question. He has omitted all reference to the really material section — 184 (iii) of the Probate and Administration Enactment — under which he was proceeding and which requires him to distribute the estate according to the law or custom having the force of law applicable to the deceased. Where the deceased was a member of a tribe that law is almost always the *adat.*

I think the Collector misdirected himself in holding that the deceased could not have held the land as *Tanah Pesaka* because he was a male. Prior to the 1st of December, 1926, when the present Customary Tenure Enactment came into force there was nothing to prevent a male from holding ancestral land even if the title was endorsed "customary land". The Enactment of 1909 did not restrict ancestral lands to females and in point of fact some ancestral lands were held by males though perhaps not many. Where a woman has no daughter her sons may inherit ancestral land

for life and this is expressly provided for in the present Enactment by the statutory life occupancy. Under the Enactment of 1909 the same effect resulted from a transmission or transfer to the sons as proprietors, provided the title was inscribed "Customary land", for they could not transfer it without the consent of the *Waris* and *lembaga*. There is clear evidence that that was the intention in this case.

Also I think the Collector misunderstood the evidence regarding *harta pembawa*. It is perfectly true that *harta pembawa* ought to be declared but it does not follow that the right of inheritance is defeated because it cannot be proved that the declaration was made. There is a kind of presumption that property which comes into the possession of the spouses during the marriage is *charian laki-bini* and if either is in possession of money or buffaloes at the time of the marriage it is very important that such declaration should be made so as to prevent subsequent disputes as to *harta dapatan* or *pembawa* but, as the *lembaga* rightly says, it is not necessary to make a formal declaration regarding ancestral land the nature of which is proved by the title and which has been held by the tribe concerned for generations. The declaration is merely evidence; it does not constitute the property as *pembawa* or *dapatan*. In this case the wife with complete candour admitted throughout that the land was in the possession of her husband before the marriage. It was therefore *harta pembawa* on her admission and no question of declaration arises.

The Collector was also influenced by the fact that the former *lembaga* sanctioned the transfer by Rolan to the deceased and two other males. He seems to have overlooked the facts that they were not only members of her own tribe but actually her sons and that she had no daughter. The fact that the *lembaga* sanctioned the transaction shows that he regarded it as ancestral land for otherwise his consent was not necessary. The Collector also wonders why the *Waris* did not take action to have the transfer declared void. There are two possible reasons for this; they may not have known of it, but it is more likely they did know of it and took no action because the transfer was not, in truth, contrary to the custom. The deceased was eligible in *adat* to hold the land for his life.

The *lembaga* of the widow stated that if a charge existing before the marriage was paid off during the marriage from *charian laki-bini* funds the widow would be entitled to have that amount repaid to her by the *Waris* before the land is returned to them. I think this is quite correct and took some further evidence on the point of fact but this only confirmed the evidence before the Collector which was that the charge was paid off, though it has not yet been formally discharged, out of the income from the *pembawa* land itself. The widow also contended that she had spent some *charian laki-bini* money on building or repairing a house on the land but the further evidence showed that she repaired the house for her own occupation and afterwards lived in it for a considerable time. I do not think this is capital expenditure which must be reimbursed by the *Waris*.

The appeal is therefore allowed and the order of the Collector set aside. The 1/3 share in the name of the deceased must be transmitted to Anyam, Zaleha, Zahara and Zainun in equal shares.

Unquestionably the title should have been inscribed "Customary land" many years ago and this ought to be done now but it is difficult under the present Enactment to add the words if one of the names on the title is that of a male. I therefore direct that after registration of the distribution order indicated above the Collector enter a caveat "to prevent improper dealings", the land being ancestral land of the Tanah Datar tribe.

At the hearing before the Collector Anyam applied that not only the 1/3 share in the name of the deceased but also the other 2/3 should be transferred to the *Waris*. The Collector rightly made no order on this application because the shares of the other two brothers were not included in the subject matter of the distribution. It is, however, open to the *Waris* to apply for distribution to them of the share of Padang who has died. It is also open to them to call upon Terinah, who is registered as the representative of Idris, to transfer the 1/3 in her name to them. If and when such applications are made they should be considered by the Collector on the principles outlined above. *Prima facie* the *Waris* are entitled to succeed but there may be claims for reimbursement and other matters requiring investigation. When all the land is registered in the names of women the words "Customary land" should be added to the title and the caveat may then be withdrawn.

Order accordingly.